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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1268 OF 2002

Chandrakant Fakkad Bhise ... Appellant

V/s

The State of Maharashtra ... Respondent

Smt. Shubada Khot, Advocate appointed for the appellant accused.

Mrs. V.R. Bhonsale, A.P.P. for the State.

CORAM: S. B. MHASE &
SMT. NISHITA MHATRE, JJ.

DATED: 16TH MARCH, 2007.

ORAL JUDGMENT (PER SMT. MHATRE, J.):

1. This appeal challenges the judgment and order of the Sessions Court, Satara, by which the accused appellant has been convicted under Section 302 of the Indian Penal Code and has been sentenced to suffer imprisonment for life and to pay a fine of Rs.500/-.

2. The accused and one Surekha had illicit relations. They were living together in a hut at Dhangarwadi, near Satara. According to the prosecution, the accused had promised the victim that he would marry her, however,

five months after they started living together, the accused suspected the victim's fidelity. He often assaulted the victim. On 29.1.2002 at about 3.30 p.m., the accused quarrelled with the victim making allegations against her character. The accused doused the victim with kerosene from a stove which was in the house and set her ablaze. The accused then extinguished the fire by pouring water on the victim. She had sustained severe burns on all over her body. The accused also suffered some burn injuries on his arms. He took the victim to the Civil Hospital, Satara, for treatment in an autorickshaw. According to the prosecution, the victim was admitted to hospital at about 5.00 p.m. Primary medical treatment was administered by the Casualty Medical Officer. He then informed the police. A dying declaration was recorded by the Assistant Sub-Inspector. Thereafter a Special Executive Magistrate also recorded a dying declaration. The crime was registered on the basis of the dying declaration recorded by the Assistant Sub-Inspector. The victim succumbed to the injuries on 1.2.2002. The inquest panchanama and spot panchanama were drawn after which the accused was arraigned for having murdered Surekha. After the case was committed to sessions, the Sessions Court, Satara, convicted and sentenced the accused under Section 302 of the Indian Penal Code.

3. The prosecution has relied on evidence of 9 witnesses, 2 of whom have turned hostile. The 2 hostile witnesses are neighbours of the victim. The father of the victim has been examined as PW-1. He learnt of the incident from the police. However, it is apparent from the deposition of this witness that he had no personal knowledge of the incident. According to this witness, the victim had informed him that the accused had doused her with kerosene and then set her ablaze. However, there are several inconsistencies and contradictions in the deposition of this witness and, therefore, this witness has not been helpful to the prosecution in proving its case against the accused.

4. PW-4 is the Assistant Sub-Inspector who recorded the first dying declaration. According to this witness, on 29.1.2002, he was informed that the victim had been admitted to the casualty ward of the hospital and was being treated for burn injuries sustained by her. This witness states that he found the victim conscious. He recorded the dying declaration after the victim’s relatives who were with her were asked to leave and after ascertaining from the medical officer that the victim was conscious and in a fit state of mind to have her statement recorded. This witness has stated that

the dying declaration was recorded by one Nabab according to his instructions. He obtained the thumb impression of the victim and the endorsement of the medical officer. This dying declaration is at Exh.22. On the basis of this statement of the victim, the crime was registered. In the cross-examination, this witness has admitted that the accused Chandrakant had accompanied the victim to the Civil Hospital. However, he has denied having any knowledge about the burn injuries on the hands of the accused.

5. This dying declaration which is at Exh.22 has been endorsed by PW-2 who was the medical officer on duty at the Civil Hospital when the victim was admitted. This witness has spoken about the mental condition of the victim when she made the statement recorded at Exh.22. He has stated that she was conscious and oriented and that the patient was in a fit condition to have a statement recorded.

6. PW-3 is the Special Executive Magistrate who has recorded the victim’s statement at about 7.00 p.m. This witness has deposed that he has taken all the necessary precautions before recording the victim’s statement. This witness has admitted that the initial portion of the dying declaration regarding the place of recording

the dying declaration was written by him of his own accord. He has denied that the victim was not in a position to speak and have a statement recorded. The statement recorded by this witness is at Exh.19. The medical officer who has been examined as PW-8 has endorsed this declaration. She has stated that she examined the patient and found that she was conscious and oriented and thereafter permitted the Special Executive Magistrate to record the statement. She has stated that even after the statement was recorded, she examined the victim and endorsed the findings of the dying declaration. However, in the cross-examination, she has denied having endorsed the statement after it was recorded.

7. Panch witness who has been examined as PW-5 has proved the spot panchanama and the inquest panchanama. According to this witness, a match-box and a bottle containing kerosene, a damaged stove, burnt pieces of cloth were seized from the spot of the incident. He has spoken about utensils being found in a disarray.

8. The investigating officer has been examined as PW-9. All the articles seized at the spot of the incident were sent for chemical analysis and kerosene residue was detected on the broken stove and the partly burnt saree.

9. We thus have to consider the effect of the dying declarations at Exh. 19 and Exh.22. In both these declarations the victim had stated that the accused doubted her character. She has spoken about the incident on 29.1.2002. The accused quarrelled with her on that day and doused her saree with kerosene from the iron stove which was in the house. He then set her ablaze with a matchstick. The victim has stated that when she started screaming, the accused tried to extinguish the fire by throwing water on her. He sustained burns on both his hands at this point of time, according to the victim. She has then stated that, after the fire was extinguished, the accused put her in a autorickshaw and admitted in the Civil Hospital. Thus, it is evident that the accused had set the victim on fire after dousing her with kerosene and the death of the victim is homicidal.

10. However, it would be necessary to ascertain whether the accused is guilty of culpable homicide. Although she was set ablaze by the accused, it is obvious that he realized his folly immediately and extinguished the fire. In fact, the accused sustained burns on both his hands while trying to save the victim. It is the accused who admitted the victim to hospital and he was

with her throughout, according to the medical officer examined as PW-2. Therefore, in our opinion, it is not possible to affirm the findings reached by the Sessions Court that the accused is guilty of having murdered his wife. In our opinion, the offence committed by the accused is culpable homicide not amounting to murder. The conduct of the accused indicates that he had no intention to kill Surekha. The sentence and punishment of the accused under Section 302 of the Indian Penal Code is, therefore, set aside. The accused is guilty of an offence punishable under Section 304 Part II of the Indian Penal Code.

11. In the result, the appeal is partly allowed.

12. The conviction and sentence under Section 302 is hereby set aside. Instead, the accused is convicted and sentenced under Section 304 Part II of the Indian Penal Code to suffer rigorous imprisonment for seven years.

(SMT. NISHITA MHATRE, J.) (S.B. MHASE, J.)

Fees of Smt. Shubada Khot, learned advocate appointed for the appellant are quantified at Rs.1000/-.

(SMT. NISHITA MHATRE, J.) (S.B. MHASE, J.)